

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF TENNESSEE,  
COMMISSION ON AGING AND DISABILITY  
AND  
[PROVIDER NAME]**

This Memorandum of Agreement, herein referred to as the Agreement, by and between the State of Tennessee Commission on Aging and Disability, herein referred to as the “State,” or “TCAD” and [PROVIDER NAME], herein referred to as the “Provider,” is for the provision of home and community based services to elderly and disabled individuals.

**JOINT INCLUSIONS/APPLICATION**

- A. This Agreement wholly incorporates a separate Memorandum of Agreement between the Commission on Aging and Disability and each Tennessee Area Agency on Aging and Disability. An executed copy of that Agreement is hereby included as Attachment A to this document.
- B. This Agreement is intended to accompany a separate Provider Agreement previously executed between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare (hereinafter referred to as “Bureau” or “TennCare”) and the Provider.
- C. All terms and conditions contained in the documents referenced in paragraphs A. and B. above are incorporated by reference herein and are applicable to the parties of this Agreement.

**TERM**

- D. This Agreement entered into between the State and [PROVIDER NAME] shall become effective [START DATE], and remain in effect through June 30, 2008.
- E. This Agreement may be terminated by either party by giving at least thirty (30) days advanced written notice to the other party. Any provisions required by State or Federal statute shall survive the expiration, cancellation, or termination of this Agreement.

**PURPOSE**

The purpose of this Memorandum of Agreement is to provide an understanding of responsibilities and establish a formal agreement so that Providers of Waiver services can serve eligible individuals who are authorized to receive services through the Statewide HCBS Medicaid Waiver Program. Payments for services under this program are provided by the State of Tennessee, Department of Finance and Administration, Bureau of TennCare. By the terms and conditions of this Agreement, the TCAD, in its role as Administrative Lead Agency (ALA) for operation of the Waiver program, will act as billing agent for the Provider as further defined in specific terms and conditions that follow.

**AUTHORIZATION**

- 1. Provider agrees to provide waiver services for individuals eligible for service only upon receipt of a Service Authorization and in accordance with the enrollee’s approved Plan of Care. Provider accepts the terms, conditions, if any, and time frames specified therein.

2. Service Authorizations will be sent to Provider five working days prior to the requested start day of service; unless circumstances warrant and there is a mutual agreement to provide immediate service to an enrollee.

### **BILLING**

3. All payments will be made by the Bureau to the Provider not to exceed the specified maximum unit rates for the waiver. These maximum unit rates will remain in effect during the period of this Agreement unless specifically changed and incorporated by amendment into the waiver. A statement of these rates will be provided on request.
4. Provider agrees that all services for which reimbursement will be claimed shall be provided in accordance with all federal and state laws pertaining to the TennCare Program, and that all charges submitted for services and items provided shall not exceed Provider's usual and customary charges for the same services and items provided to persons not entitled to receive benefits under the TennCare Program. Provider must offer documentation when requested to the State or to the Bureau as a basis for determining Provider's usual and customary rate for the service.
5. Provider agrees that all claims for reimbursement of services provided will be in accordance with the enrollee's approved Plan of Care.
6. Provider agrees to submit billing claims to the appropriate Area Agency on Aging and Disability acting as authorized representative of the ALA using the prescribed forms. Claims for the fiscal year must be submitted to the ALA no later than July 31st of each year.
7. TCAD will notify the AAAD and the Provider of any changes it makes to the Provider's claims before submitting to the Bureau.
8. TCAD will not be responsible for errors and omissions in claims that are the fault of the provider.
9. Payment will be made by the Bureau following receipt of the Provider's claim from TCAD, which meets billing and authorization specifications.

### **SERVICE DELIVERY**

10. Provider agrees that any deviations from the authorized service schedule will be reported to the Case Manager. Provider agrees to obtain approval prior to revision in the service schedule.
11. Provider agrees to provide the services in compliance with the State's and the Bureau's requirements, standards, service descriptions, policies and procedures manuals.
12. Provider agrees that they have staff sufficient to commit to the service(s) and time period(s) as authorized by the Plan of Care and the Case Manager.
13. Provider shall provide backup for their own staff if they are unable to fulfill their assignment for any reason. Backup staff must meet the qualifications specified for the service authorized. Provider will promptly notify the client and the client's Case Manager if any schedule disruption occurs using the State's Missed Visit Reporting protocol.

14. Provider agrees to notify the enrollee's Case Manager in writing at least ten (10) business days prior to the termination of services to a client for any reason. The notification must include reason(s) for termination.

### **ADMINISTRATION**

15. Provider shall be treated for all purposes as an independent contractor. Provider, its employees and agents shall not be considered for any purposes as an employee of the State. Provider agrees to pay all federal, state and self-employment taxes due on any compensation received by Provider or paid to Provider's employees or agents and to hold harmless and indemnify the State for any, of these taxes which the State may be assessed, including penalties and interest, and including the matching portion of social security taxes. Provider understands the State will not be withholding any taxes or paying social security taxes for Provider, because Provider is an independent contractor.
16. Provider will not subcontract any service(s) funded through the State or the Bureau without a prior written authorization from the State. If approval to subcontract is granted, Provider shall require any subcontractor to comply with the provisions set forth in this agreement. Further, Provider shall remain responsible to the State for performance of any subcontractor and shall monitor the performance of any subcontractor.
17. Provider shall ensure that quality services are provided to eligible clients. The determination of quality must be based on a Quality Assurance system established by the State.
18. The parties agree that all information, including but not limited to client information, received by Provider and Provider's staff in administering the terms and provisions of this agreement shall be received and maintained in a confidential manner commensurate with the conditions set forth in this agreement and the requirements of all applicable state or federal laws and regulations.

### **MONITORING AND EVALUATION**

19. Provider shall allow monitoring and evaluation of Provider's delivery of service(s) and its adherence to this agreement at any time during normal business hours by any individual duly authorized by the State, the Bureau or CMS. As a part of the monitoring process, Provider agrees that the State and the Bureau has the authority to audit any files, records, books or any other documents that relate to activities performed under this Agreement.
20. Provider agrees that the State has the right to make recommendations and findings in connection with any monitoring/review of Provider's operations and Provider agrees to comply with any corrective actions specified by the State, within the time limits established by the State.
21. Following any monitoring or review, the State will prepare a written report of findings, observations, evaluations, suggestions, and/or specific directions for corrective action by Provider. In the event that specific corrective action is required, Provider will have thirty (30) days from the receipt of the directions to comply. A failure to comply with the State's specific directions will be treated as a breach of this agreement.
22. If a monitoring/review by the Federal Government or State Government determines that adequate service delivery documentation is not in existence and/or inappropriate claim has been paid to the Provider by the Bureau, Provider agrees that the Bureau shall have the right to with hold such amount against current or future allowable claims and/or, demand cash repayment.

## **STANDARD TERMS AND CONDITIONS**

23. Provider must maintain books, records, documents and other evidence and follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs attributable to each service provided pursuant to this Agreement. Provider shall establish and maintain service records and such other statistical reports and regulations that are required by the State and the Bureau. Provider agrees to maintain these records for a period of five (5) years from the date of the expiration of this Agreement. All records that relate to activities performed under this agreement may be reviewed at any time by any duly authorized representative of the State or the Bureau.
24. If any term, condition or provision of this agreement is held to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.
25. Provider is required to maintain comprehensive general liability insurance coverage for personal injury and property damage and/or malpractice insurance (for errors and omissions) in the minimum amount of \$500,000 or in accordance with state law unless otherwise limited by the Tennessee Governmental Tort Liability Act [T.C.A. 29-20-403(b)]. Provider will furnish the State with documentation of insurance coverage, where applicable.
26. Provider shall immediately notify the State if liability insurance is canceled or modified in amount. In the event of cancellation, the Bureau shall make no further disbursements until certification is provided by a bonding or insurance company that the provisions set forth in this section have been satisfied.
27. Provider agrees to comply with Title VI of the Civil Rights Act of the 1964 (42 USC § 2000d et seq.) Title VIII of the Civil Rights Act of 1968 42 USC § 3601 et seq.), Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the Americans with Disabilities Act of 1990 (Pub L. 101-336, 104 Stat. 327), the Age Discrimination Act of 1975 (42 USC § 6101 et seq.) and (41 U.S.C. & 701 et. seq.), the Drug-Free Workplace Act of 1988, Executive Order 11246 and 41 CFR Part 60-1 et seq., as applicable and all other non-discrimination regulations of the United States government, as applicable to ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin or ancestry, be excluded from participating in, be denied the benefit of Provider's services or otherwise subjected to discrimination under any program or activity for which Provider receives, directly or indirectly, federal or state financial assistance and Provider agrees to immediately take measures to effectuate this provision.
28. The parties agree that any publicity released or other public reference, including media releases, informational pamphlets, etc. regarding the services provided under this agreement, shall be reviewed by TennCare for appropriate reading level of content and will clearly state that all services are provided without regard to race, age, color, religion, sex, disability, national origin, or ancestry.
29. Provider assures the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Agreement. Provider agrees to cooperate with the State so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Provider will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.

30. Provider agrees to comply, and assures that its employees will comply, with all applicable licensing standards, accrediting standards and any other standards or criteria which any appropriate government entity requires of Provider to deliver services pursuant to this agreement. The Bureau shall not be required to reimburse Provider for any services performed when Provider or its employees are not in compliance with applicable licensing, certifying or accrediting standards. Provider agrees to provide the State with documentation and/or verification of current license, certification, and/or compliance with applicable standards. If license, certification or accreditation expires or is revoked, Provider agrees to notify the State immediately thereof.
31. Provider shall not impose, solicit or collect any fees from the recipients of services rendered by Provider pursuant to this Agreement, except for Patient Liability duly assigned by the Department of Human Services, unless authorized in writing by the State.
32. Provider agrees to participate in a system for the timely reporting and handling of complaints for enrollees, which is in compliance with the State's requirements.
33. Provider certifies, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this agreement by any federal or state department or agency. The term "principal" for purposes of this agreement, is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or person who has a critical influence on or substantive control over the operations of Provider.
34. Provider shall give written notice to the State of any change in Provider's legal name or legal status including, but not limited to, a sale or dissolution of Provider's business. The State reserves the right to terminate this agreement should Provider's legal status change in any way. Termination pursuant to this paragraph shall be effective from the date of the change in Provider's legal status.

#### **SPECIAL TERMS AND CONDITIONS**

35. If either party fails to comply with the terms of this Agreement, the other party may, upon thirty (30) days written notice to the party in breach, suspend services and/or payment in whole or in part. The notice of suspension shall state the reasons for the suspension, any corrective action required of the other, and the effective date.
36. Provider agrees to notify the State within ten (10) business days of filing of any petition for bankruptcy or reorganization pursuant to bankruptcy proceedings.
37. Provider agrees that the State may terminate this Agreement immediately if Provider ceases doing business, if Provider files a petition in the United States Bankruptcy Court under the Bankruptcy Reform Act of 1978, and any amendments thereto (11 USC § 101 et. seq.), or if a petition for involuntary bankruptcy is filed against Provider. Agency will notify Provider of this termination, in writing, by registered or certified mail.
38. If the Commissioner of the Department of Finance and Administration makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the agreement shall be canceled. A determination by the Commissioner that funds are not appropriated or otherwise available to support this agreement shall be final and conclusive.

39. The parties acknowledge and agree that this Agreement may be terminated immediately by either party should the other party attempt to assign, transfer, convey or encumber this agreement in any way. Any notice of termination pursuant to this paragraph shall be provided in writing to the other party, by registered or certified mail.
40. Upon expiration or termination of this Agreement, the State may require that all documents including, but not limited to client files, data, studies and reports prepared by Provider pursuant to this agreement be submitted to the State. The State may require the transfer of records or property to its own offices or a designated successor. The State shall submit to Provider a full and detailed accounting of any records taken from Provider and shall make any records available to Provider as necessary for subsequent audit purposes.

**IN WITNESS WHEREOF:**

**[PROVIDER LEGAL ENTITY NAME]:**

---

**[PROVIDER OFFICIAL NAME AND TITLE]**

**Date**

**Tennessee Commission on Aging and Disability:**

---

**Richard M. Hann, Executive Director**

**Date**

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF TENNESSEE,  
COMMISSION ON AGING AND DISABILITY  
AND  
[EACH AREA AGENCY ON AGING AND DISABILITY]**

This Memorandum of Agreement, herein referred to as the Agreement, by and between the State of Tennessee Commission on Aging and Disability, herein referred to as the “State,” or “TCAD” and [Each Area Agency on Aging and Disability], herein referred to as the “Area Agency,” is for the administration of the Statewide Waiver for home and community based services to elderly and disabled individuals.

**JOINT INCLUSIONS/APPLICATION**

This Memorandum of Agreement is intended to accompany Grant Agreement(s) previously executed between the State of Tennessee, Commission on Aging and Disability and each Area Agency on Aging and Disability.

**TERM**

- A. This Agreement entered into between the State and [Each Area Agency on Aging and Disability] shall become effective **[START DATE]**, and remain in effect through June 30, 2008.
- B. This Agreement may be terminated by either party by giving at least thirty (30) days advanced written notice to the other party. Any provisions required by State or Federal statute shall survive the expiration, cancellation, or termination of this Agreement.
- C. All terms and conditions contained in the documents referenced in paragraphs A and B. above are incorporated by reference herein and are applicable to the parties to this Agreement.

**PURPOSE**

The purpose of this Memorandum of Agreement is to provide an understanding of responsibilities and establish a formal agreement for Area Agencies on Aging and Disability that serve as authorized representatives of the Administrative Lead Agency ALA for the Statewide HCBS Medicaid Waiver Program. Payments for services under this program are provided by the State of Tennessee, Department of Finance and Administration, Bureau of TennCare (hereinafter referred to as “Bureau” or “TennCare”). By the terms and conditions of this Agreement, the TCAD, in its role as (ALA), and Area Agencies on Aging and Disability as authorized representatives of the ALA, will act as billing agent for Providers of services of the Waiver program as further defined in specific terms and conditions that follow.

**AUTHORIZATION**

- 1. Area Agency agrees to verify that reimbursement for waiver services for individuals eligible for service are provided only after receipt of a Service Authorization and in accordance with the enrollee’s approved Plan of Care. The Area Agency will enforce the terms, conditions, if any, and time frames specified therein.

2. Area Agency will verify that Provider commenced service to an enrollee within five working days from requested start day of service and receipt of a Service Authorization; unless circumstances warrant and there was an agreement to provide immediate service to an enrollee.
3. All payments to Providers will be made by the Bureau to the Provider not to exceed the specified maximum unit rates properly established in the Waiver document. These maximum unit rates will remain in effect during the period specified above unless specifically changed by TennCare.
4. Area Agency agrees to verify that all services for which Provider claims reimbursement shall be provided in accordance with all federal and state laws pertaining to the TennCare Program, and that all charges submitted on behalf of the Provider for services and items provided shall not exceed Provider's usual and customary charges for the same services and items provided to persons not entitled to receive benefits under the TennCare Program.
5. Area Agency agrees to verify that all claims forwarded by Provider for reimbursement of services will be in accordance with the enrollee's approved Plan of Care.
6. Area Agency agrees to verify and forward billing claims to the ALA on behalf of the Provider.
7. Area Agency agrees that it is responsible for transmitting claims on behalf of the Provider accurately as received from the Provider.
8. Area Agency agrees that it will notify Provider of any changes it makes to Provider's claims before submitting to the ALA.
9. Area Agency will not be responsible for errors and omissions in claims that are the fault of the Provider.